

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3776 of 1991

For Approval and Signature:

HON'BLE MR JUSTICE AKIL KURESHI

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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ZAVERBHAI RAMJIBHAI GEVARIA - Petitioner(s)

Versus

STATE OF GUJ & 1 - Respondent(s)

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Appearance :

MR MB GANDHI for Petitioner No(s).: 1.

NMR MR MENGDEY, AGP for Respondent No(s).: 1

Respondent No.2 served.

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CORAM :HON'BLE MR JUSTICE AKIL KURESHI

Date : 14/07/2005

ORAL JUDGMENT

In the present petition, the petitioner has challenged the order dated 17.7.90 passed by the Deputy Collector, Amreli as also the order dated 4.3.91 passed

by the Additional Chief Secretary (Appeals), Revenue Department, Government of Gujarat.

2. The petitioner had purchased a piece of land bearing survey No.540 of Amrapur, Taluka Vadiya admesasuring 2 acres and 13 gunthas as well as survey No.537 admeasuring 0 acres and 15 gunthas and survey No.535 admeasuring 0 acres and 29 gunthas by registered sale deed dated 15.1.76 from one Shri Gorakbhai Mulubhai. The authorities felt that the sale transaction was opposed to the provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act (hereinafter to be referred to as the Fragmentation Act). On that basis, a show cause notice came to be issued against the petitioner by the Deputy Collector on 15.6.90. It may be noted that the mutation entry in the revenue records was certified on 10.8.76. Ultimately, the Deputy Collector by his order dated 17.7.90 was pleased to declare that the sale transaction of land bearing survey Nos.535 and 537 was opposed to the provisions of sections 7 and 8 of the Fragmentation Act. He ordered payment of fine of Rs.100 against the seller and also ordered restoration of the possession of the land. The petitioner's appeal against the order of the Deputy Collector was rejected by the Government on 4.3.91.

3. From the above recording of events, it can be seen that for the sale transaction which took place on 15.1.76 and for which mutation entries were also certified on 10.8.76, a show cause notice alleging breach of provisions of Fragmentation Act came to be issued for the first time on 15.6.90. Thus, after more than 14 years, the Deputy Collector sought to annul the sale transaction entered into by the petitioner.

4. In the case of Valjibhai Jagjivanbhai v. State of Gujarat, 2005(2) GLH 34, a Division Bench of this Court held that powers under the Fragmentation Act for setting aside the sale transaction cannot be exercised at a belated stage and powers under section 9(2) and 9(3) of the said Act have to be exercised within a reasonable period of time especially when the authorities had opportunity to know about such a transaction.

5. In the present case, there is absolutely no explanation for initiating proceedings under the Fragmentation Act after more than 14 years. As noted earlier, the fact of sale transaction had come on record through mutation entries. From the impugned orders also, I do not find any justification to permit the authorities to

inquire into the issues after such an inordinate delay. On this short ground alone, I am inclined to aside the impugned orders.

6. Consequently, while allowing the petition, the impugned orders dated 17.7.90 and 4.3.91 are set aside. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)